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15 STATE FARM MUTUAL AUTOMOBILE INS. CO.

16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **SAN FRANCISCO DIVISION**

19 GREGORY BUONOCORE, an
20 individual on behalf of himself and all
21 others similarly situated;

22 Plaintiff,
23 vs.

24 STATE FARM MUTUAL
25 AUTOMOBILE INSURANCE
26 COMPANY; and DOES 1 through 10
inclusive;

27 Defendants
28

CASE NO. CV 08-00184 PJH
Judge: Hon. Phyllis J. Hamilton

**JOINT CASE MANAGEMENT
STATEMENT**

Date: September 4, 2008
Time: 2:30 p.m.
Courtroom: 3

1 This joint report follows the conference of counsel pursuant to Federal Rule of Civil
2 Procedure 26(f), conducted on August 29, 2008, by counsel for Plaintiff Gregory
3 Buonocore, Kabateck Brown Kellner LLP, and counsel for Defendant State Farm Mutual
4 Automobile Insurance Company (hereinafter "State Farm"), Sedgwick, Detert, Moran &
5 Arnold LLP.

6 **RESPONSES TO THE COURT'S STANDING ORDER**

7 **1. Jurisdiction and Service:**

8 This Court has original jurisdiction over this action pursuant to 28 U.S.C. §
9 1332(d)(2) in that it is a class action filed under rule 23 of the Federal Rules of Civil
10 Procedure, the matter in controversy, as aggregated pursuant to 28 U.S.C. § 1332(d)(6)
11 exceeds the sum of \$5,000,000 exclusive of interest and costs, and a substantial number of
12 members of the class of plaintiffs are citizens of a state different from defendant State Farm.

13 There are no outstanding parties to be served.

14 **2. Facts:**

15 **Plaintiff's statement:** Plaintiff had automobile insurance coverage with
16 defendant State Farm. On January 26, 2005, Plaintiff, while driving his SUV, was struck by
17 another motorist (hereinafter "third party motorist"). The third party motorist's insurance
18 coverage was limited to \$30,000. The third party agreed to settle Plaintiff's claim and paid
19 its \$30,000 insurance policy limit to the Plaintiff. The settlement agreement contained a
20 "release of liability" and a denial of liability clause as to the third party motorist with which
21 the Plaintiff agreed and signed his consent thereto. Since Plaintiff's total losses were in
22 excess of the third party's \$30,000 insurance policy, Plaintiff filed an uninsured motorist
23 claim pursuant to the underinsured motorist provision of Plaintiff's State Farm automobile
24 insurance policy.

25 Pursuant to its medical coverage clause, State Farm paid the \$25,000 medical
26 coverage limit. State Farm's insurance policy requires Plaintiff to reimburse State Farm any
27 money Plaintiff recovers from a "liable" party pursuant to the medical payments
28 reimbursement provision in "Section II – Medical Payments – Coverage C." Plaintiff

disputes this claimed right of reimbursement on the grounds that 1) the terms of “Section II – Medical Payments – Coverage C” are vague and ambiguous and are therefore unenforceable, 2) key terms in the policy are not defined, and 3) the third party has expressly denied liability and Plaintiff has waived all rights against the third party in the Release that was executed.

Defendant’s Statement: This is an issue concerning an underinsured motorist claim that has not proceeded to arbitration. Plaintiff, a State Farm policyholder, was allegedly injured in an accident by an underinsured motorist. Pursuant to the policy’s medical payments provision, State Farm paid plaintiff the \$25,000 limits of its medical payments coverage. The insurer for the underinsured motorist paid its policy limits of \$30,000. In connection with settlement of plaintiff’s claim against the underinsured motorist, the underinsured motorist admitted liability in response to requests for admission and reference to the admission of liability was noted in the parties’ settlement agreement. After the underinsured motorist admitted liability, plaintiff filed an underinsured motorist claim with State Farm. Plaintiff’s underinsured motorist claim has not yet gone to arbitration. State Farm has advised plaintiff that, pursuant to the terms of the State Farm policy, State Farm will not pay again for the medical payments coverage previously paid under the policy.

3. Legal Issues:

Plaintiff’s statement: The main issue in this case will be a legal dispute between the parties as to whether Defendant State Farm is entitled to reimbursement under “Section II – Medical Payments – Coverage C” of its automobile insurance policy. “Section II – Medical Payments – Coverage C” of the State Farm automobile insurance policy reads as follows:

“If the *person* to or for whom we make payment recovers proceeds from any party **liable** for the *bodily injury*, that *person* shall hold in trust for us the proceeds of the recovery, and reimburse us to the extent of our payment.”
(emphasis added)

Defendant’s statement: Defendant disagrees with the legal issue as identified

1 by plaintiff. Defendant contends the following legal issues are presented in this action: (1)
2 Does State Farm have a right under its uninsured motorist coverage to not pay again
3 medical payments that it previously paid under the medical payments provision of the
4 policy? (2) Assuming that Coverage C was applicable, which defendant contends it is not,
5 can plaintiff claim that a party who has executed verified requests for admission and
6 admitted liability in a settlement agreement is not a "party liable for the *bodily injury*"? (3)
7 Must plaintiff complete his underinsured motorist arbitration prior to bringing a claim
8 against State Farm pursuant to the terms of the policy?

9 **4. Motions:**

10 **Plaintiff's statement:** Plaintiff reserves the right to file motions as the case
11 develops. Defendant has filed a motion for judgment on the pleadings.

12 **Defendant's statement:** Defendant has filed a motion for judgment on the
13 pleadings pursuant Federal Rule of Civil Procedure 12(c). A hearing on Defendant's
14 motion is currently set for September 3, 2008 at 9:00 a.m. Defendant may file additional
15 motions depending on the outcome of its motion for judgment on the pleadings. Defendant
16 will oppose any motion for leave to amend the complaint.

17 **5. Amendment of Pleadings:**

18 **Plaintiff's statement:** Plaintiff will be filing a motion to amend the
19 complaint to substitute Plaintiffs in order to narrow the issues.

20 **Defendant's statement:** Defendant will oppose any such motion for leave to
21 amend the complaint as inappropriate and futile in this case. Defendant contends that
22 Plaintiff cannot amend his complaint to substitute in a new plaintiff, because the very nature
23 of such a complaint would constitute a completely new and different lawsuit. Defendant
24 contends that any claim by a new plaintiff who has not submitted an underinsured motorist
25 claim and who has not obtained an admission of liability from the third party motorist, is a
26 different lawsuit than the one filed by Plaintiff.

27 **6. Evidence Preservation:**

28 The parties have discussed the issue of evidence preservation and both parties agree
that they will preserve all documents and electronic evidence relevant to the issues in this

1 action.

2 **7. Initial Disclosures:**

3 The parties have exchanged initial disclosures pursuant to Federal Rule of Civil
4 Procedure 26(a)(1) on May 1, 2008.

5 **8. Discovery:**

6 **Plaintiff's statement:** Plaintiff has served discovery on Defendant. The
7 parties will have to meet and confer on this discovery. Plaintiff anticipates serving
8 additional discovery.

9 **Defendant's statement:** Defendant is awaiting the Court's ruling on its
10 motion for judgment on the pleadings before serving discovery on Plaintiff. In the event
11 that the Court does not grant Defendant's motion, Defendant anticipates that depositions,
12 interrogatories, requests for admission, and requests for production of documents may be
13 needed.

14 **9. Class Actions:**

15 **Plaintiff's statement:** Pursuant to Local Rule 16-9(b), Plaintiff
16 Independently responds as follows:

17 (1) This action is maintainable as a class action pursuant to FRCP 23(a) and 23(b).

18 (2) Plaintiff describes the class as follows: *All California Residents who are or were*
19 *State Farm automobile insurance policy holders with medical payment coverage (Section II*
20 *– Medical Payments – Coverage C) who recovered money from a third party and/or an*
21 *uninsured motorist claim by way of settlement or compromise without a determination of*
22 *liability, and have thereafter reimbursed State Farm for proceeds advanced pursuant to the*
23 *medical payment coverage provision (Section II – Medical Payments – Coverage C).*

24 (3) Certification is appropriate because Defendant State Farm enforces *Section II –*
25 *Medical Payments – Coverage C* in its automobile policy against all its insureds who are
26 residents of California whenever there is a third party recovery.

27 (4) Proposed timeline for conditional certification: This date should be set after
28 Defendant's motion for summary judgment is resolved.

Defendant's statement: Defendant contends that it is entitled to judgment in

1 this action as a matter of law and that the issues presented by Mr. Buonocore's complaint
 2 are not appropriate for class certification. Each claim is factually different and must be
 3 resolved on its own peculiarities. For example, Mr. Buonocore did not simply make a
 4 request for medical payments coverage, but also entered into a settlement agreement
 5 whereby an underinsured motorist clearly admitted liability. Mr. Buonocore then made an
 6 underinsured motorist claim against State Farm and that claim is still in the process of
 7 proceeding to arbitration. Defendant will oppose any motion for class certification made by
 8 plaintiff.

9 **10. Related Cases:**

10 Neither party is aware of any related cases.

11 **11. Relief:**

12 **Plaintiff's statement:** Plaintiff seeks to recover, on behalf of the class, the
 13 aggregate value of all monies for which State Farm sought and obtained reimbursement of
 14 pursuant to *Section II – Medical Payments – Coverage C*. At the present time, Plaintiff is
 15 in the process of trying to obtain discovery required to calculate the amount of damage
 16 sought in these categories.

17 **Defendant's statement:** Defendant contends that plaintiff is not entitled to
 18 any relief, monetary or otherwise.

19 **12. Settlement and ADR:**

20 **Plaintiff's statement:** Plaintiff is willing to participate in good faith
 21 Alternative Dispute Resolution proceedings. No efforts to date have been commenced by
 22 the parties.

23 **Defendant's statement:** Defendant previously advised that it would
 24 participate in a mediation of Plaintiff's claim with an agreeable mediator. It now appears
 25 that this Plaintiff is not intending on pursuing his claims.

26 **13. Consent to Magistrate Judge for all Purposes:**

27 **Plaintiff's statement:** Plaintiff consents to a Magistrate.

28 **Defendant's statement:** Defendant does not consent to the assignment of a
 Magistrate Judge for all purposes.

1 **14. Other References:**

2 The parties agree that this case is currently not suitable for other references.

3 **15. Narrowing of Issues:**

4 **Plaintiff's statement:** Plaintiff has not identified any issues that can be
5 narrowed down by agreement or by motion.

6 **Defendant's statement:** Defendants' motion for judgment on the pleadings is
7 expected to either result in dismissal of this action or a narrowing and clarification of the
8 issues. Defendant also believes that the issues in this action are already narrow and barring
9 class certification, do not require any extraordinary procedures.

10 **16. Expedited Schedule:**

11 The parties agree that this is not a type of case that can be handled on an expedited
12 basis with streamlined procedures.

13 **17. Scheduling:**

14 The parties agree that setting a schedule for expert designation, discovery cut-off,
15 hearing of dispositive motions, pre-trial conference and trial, should be deferred until after
16 Defendant's motion for judgment on the pleadings is decided.

17 **18. Trial:**

18 Plaintiff now estimates three to four weeks for trial. Plaintiff requests a jury for those
19 issues that are properly before a jury.

20 Defendant contends that it is premature to estimate the length of trial at this time.
21 Defendant requests a jury trial.

22 **19. Disclosure of Non-party Interested Entities or Persons:**

23 **Plaintiff's statement:** Plaintiff has filed a "Certification of Interested Entities
24 or Persons' pursuant to Civil Local Rule 3-16, and hereby restates that (i) no persons, firms,
25 partnerships corporations or other entities have a financial interest in the subject matter in
26 controversy or in a party to the proceeding; and (ii) no persons, firms, partnerships
27 corporations or other entities have any other kind of interest that could be substantially
28 affected by the outcome of the proceeding.

Defendant's statement: Defendant has filed its Certification of Interested

1 Entities or Persons, pursuant to Civil Local Rule 3-16, and hereby restates that as of this
2 date, other than the named parties, there is no such interest to report.

3 **20. Other Matters:**

4 No other matters at this time.

5 DATED: August 29, 2008 By: /s/ Niall G. Yamane
6 **KABATECK BROWN KELLNER LLP**
7 Niall G. Yamane
Attorney for Plaintiff and the Proposed Class

8 DATED: August 29, 2008 By: /s/ Andrew J. King
9 **SEDGWICK, DETERT MORAN & ARNOLD**
10 **LLP**
11 Kevin J. Dunne
12 Laura L. Goodman
13 Andrew J. King
14 Attorneys for Defendant State Farm Mutual
15 Automobile Insurance Company
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